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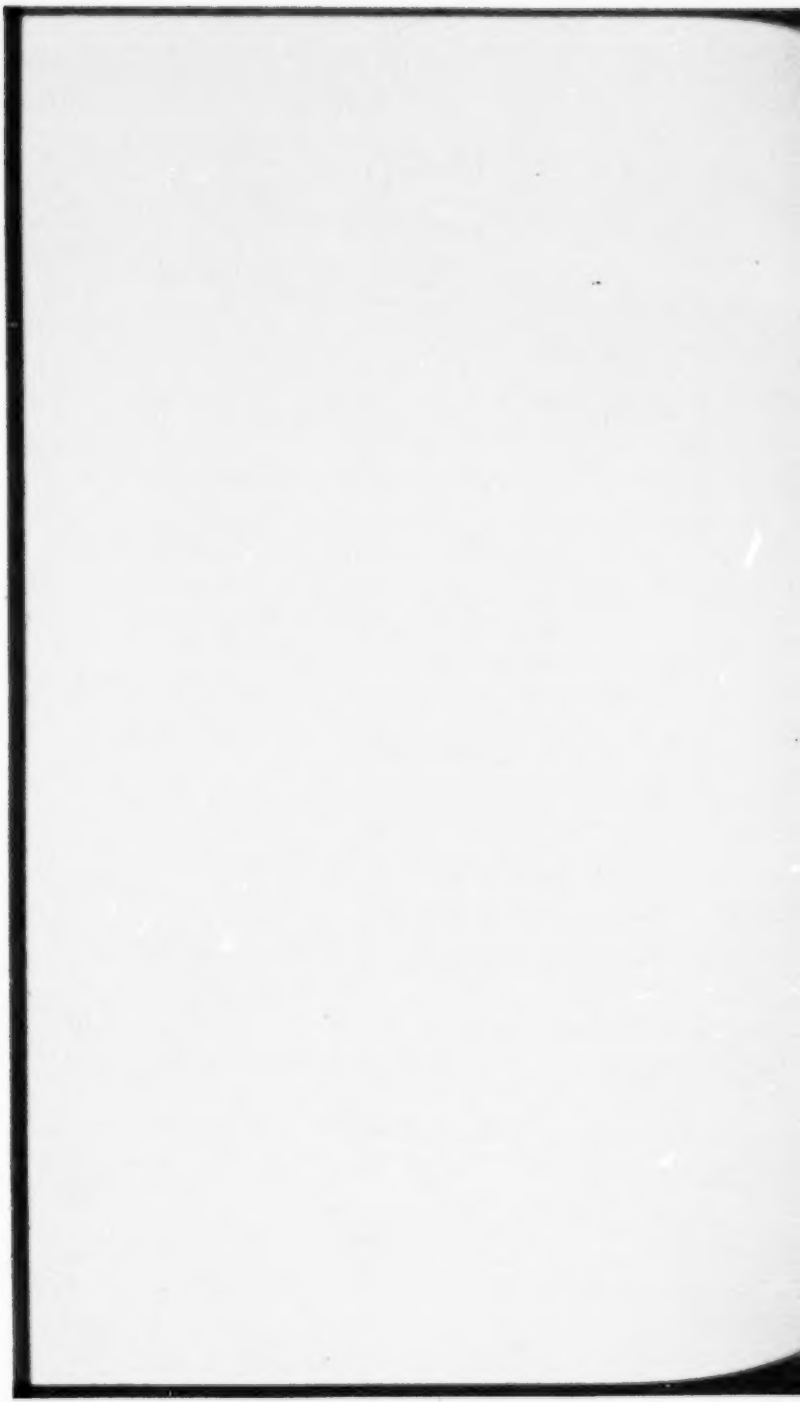

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1946.

No. 908.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL LODGE NO. 926, et al.,
Petitioners,

vs.

TOLEDO, PEORIA & WESTERN RAILROAD, a Corporation, and FARMERS GRAIN COMPANY, a Corporation, et al.,
Respondents.

BRIEF OF RESPONDENT SHIPPERS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JURISDICTION.

It is conceded by this respondent that this Court has jurisdiction in this cause to consider a Petition for Writ of Certiorari under Section 240 (a) of the Judicial Code as amended by Act of February 13, 1925, Ch. 229, Section 1, 43 Stat. 938 (U. S. C. A., Title 28, §347).

OPINION BELOW.

The Circuit Court of Appeals opinion is reported in 158 F. (2d) 109, and the District Court in 66 F. Supp. 845.

STATEMENT OF THE CASE.

Petitioner's statement fails to inform the Court of facts which we deem essential to an understanding of this case. We therefore desire to make this brief statement.

On October 1st, 1945, the Toledo, Peoria & Western Railroad came to a standstill. Along its line from Effner, Indiana, across Illinois to Keokuk, Iowa, were many small towns, villages, farming communities and businesses dependent on it alone for rail transportation. Patiently the people waited for the railroad and the unions to compose their differences, but bickering and argument continued without result. In the meantime the public suffered. The little businesses dependent on the railroad struggled against the heavy losses they were sustaining daily. All attempts by governmental agencies to bring back rail services failed. Finally a group of 19 shippers practically all of whom had no other rail service, banded together in the hope that a federal court would grant them relief from what the District Court describes as "an intolerable situation." And so on February 21st, 1946, they filed suit in the District Court at Peoria, Illinois, to try to bring about a restoration of rail service. They alleged in their complaint that the Interstate Commerce Act gave them and the public a right to have rail transportation, that the same act prohibited the railroad from abandoning operation of the railroad. They alleged facts showing that the railroad owner had knowingly and intentionally pursued an arbitrary and unreasonable course of conduct which would only result in a stoppage of transportation. They also alleged that the unions also contributed to cause the hardship and suffering with which they and the public were burdened. Knowing the personalities involved and the peculiar circumstances of the case they asked the District Court to restore rail transporta-

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tion to them through a receiver as the most practical and effective remedy. They also asked for other general relief.

The District Court after hearing the testimony of a hundred or more witnesses and receiving in evidence several hundred exhibits found that plaintiffs had proved their case and had established that they had a right to rail transportation which the railroad had wrongfully failed to furnish them. The District Court after seeing and hearing all these witnesses and carefully considering the case concluded that under the circumstances the only practical and effective remedy for the shippers and the public was the operation of the railroad by the court itself through a receiver.

The Circuit Court of Appeals agreed with the District Court that plaintiffs had a right of action, but differed with it as to the form of remedy that should be granted to plaintiffs. It was that court's opinion that the District Court should have granted a mandatory injunction against the railroad instead of a receiver. They also held that to make this effective an injunction should be granted against the defendant unions and their officers and all other persons restraining interference with the operation of the railroad under the mandatory injunction. The petition filed in this court seeks a review of the latter part of this order and presents the question of the authority of a Federal Court under the Norris LaGuardia Act to enter such an injunction.

Respondent-shippers are primarily interested in obtaining a restoration of complete rail service. We are of the opinion that the only way this can be obtained is, as the District Court held—by operation through a receiver. The remedy ordered by the Circuit Court of Appeals—a mandatory injunction—we believe is inadequate. Conse-

quently, we soon will file with this Court a petition for a Writ of Certiorari asking that the judgment of the District Court be affirmed and the Circuit Court of Appeals be reversed. If this Court grants our petition and agrees with our position the question presented by petitioner unions here will not arise. On the other hand, we feel the relief granted by the Circuit Court of Appeals is better than none and wish to sustain it unless this court agrees that the form of remedy was within the discretion of the Trial Court and its judgment should not have been reversed.

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SUMMARY OF ARGUMENT..

I.

Petitioners attempt to question the issuance of a mandatory injunction against the railroad compelling it to furnish rail service. They are in no position to question an order entered against another party and which does not compel them to do anything.

Furthermore, even if they could raise the question, the rights of the public to continued rail transportation is paramount. It is the railroad's absolute duty to furnish the public with rail service which it cannot avoid by engaging in a labor controversy resulting in a strike.

II.

The Circuit Court of Appeals had authority to direct the District Court to issue an injunction against interference with the operation of its mandatory injunction. A Court has inherent authority to protect and effectively enforce its own decrees.

ARGUMENT.

I.

Plaintiff and the Public Have a Right to Rail Service.

The first question presented by petitioner is whether or not a railroad involved in a strike may be compelled by mandatory injunction to furnish transportation to the public or is the public forced to await the convenience of the railroad until it disposes of its labor dispute.

It is readily apparent that petitioner is in no position to argue this question. The mandatory injunction was granted against the railroad not the unions. One party cannot appeal from an order entered solely against another party. It is no concern of the unions what order the Circuit Court of Appeals directed to be entered against the railroad and therefore they have no standing to question it.

The raising of this question does, however, serve a beneficial purpose in this case. It brings into sharp focus the dominant issue in this case, i. e., the rights of the public. The Circuit Court of Appeals in its opinion was so concerned with discussing the labor controversy to the exclusion of the question of the rights of the public that Judge Major in his dissenting opinion stated:

> "The majority opinion, so I think, places too much stress upon the labor controversy existing between the railroad and its employees and fails to ascribe sufficient importance to the plaintiffs, the shippers, for whose benefit and on whose behalf the law imposes a positive duty to provide and furnish transportation."

Petitioners argue that the Railway Labor Act by inference recognizes that there will be strikes on railroads

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and that railroads are not compelled by the Act to reach an agreement with its employees. They then conclude that because of this the positive duty stated in the Interstate Commerce Act should be considered as amended to contain the proviso that the duty does not exist where the railroad was engaged in a labor controversy in which a strike had occurred.

Railroads are engaged in performing public functions and owe a different and greater duty to the public than an ordinary private business. In Olcott v. Supervisors, 16 Wal. 678, this Court stated:

> "That railroads, though constructed by private corporations and owned by them are public highways, has been the doctrine of nearly all the courts ever since such conveniences for passage and transportation have had any existence . . . The owners may be private companies, but they are compellable to permit the public to use their works in the manner in which such works can be used."

In U. S. v. Trans-Missouri Freight Assn., 166 U. S. 290, this Court states:

> ". . . they all primarily owe duties to the public of a higher nature even than that of earning large dividends for their shareholders. The business which the railroads do is of a public nature closely affecting almost all classes in the community—the farmer, the artisan, the manufacturer and the trader."

In 24 Am. Jur. 226 it is stated:

> "By the acceptance of a charter which confers on it the power of eminent domain and other valuable privileges, a railroad company assumes certain duties. It must exercise the functions for which it was organized, and in consideration of which the privileges were conferred."

The Interstate Commerce Act § 1 (4) states:

> "It shall be the duty of every common carrier subject to this Chapter to provide and furnish transportation upon reasonable request therefor."

In the much cited case of People v. New York Central and H. R. R. Co., 28 Hun. 543, a labor dispute resulted in a shut down. Such was brought to compel operation. After reviewing the facts the Court stated:

> "These facts reduce the question to this: Can railroad corporations refuse or neglect to perform their public duties upon a controversy with their employees over the cost or expense of doing them? We think the question admits of but one answer. The excuse has in law no validity. The duties imposed must be discharged at whatever cost. They cannot be laid down or abandoned or suspended without the legally expressed consent of the State."

Another case involving a work stoppage on account of a strike is McCran v. Public Service Ry. Co., 122 Atl. 205. In holding the street railway had to operate the court stated at p. 208:

> "The duty resting upon a quasi-public corporation must be performed or its privileges and franchises must be surrendered. It cannot assume to discharge its duty to the public on and off as it may find it profitable to do so."

In Loader v. Brooklyn Heights Railroad Co., 35 N. Y. S. 966, a strike interrupted rail service. In holding the railroad was still compelled to operate the Court stated:

> "It may not lawfully cease to perform that duty even for one hour. The directors of a private business company, may, actuated by private greed or motives of private gain, stop business, and refuse to employ labor at all, unless labor come down to their conditions, however distressing; for such are the legal, in-

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dustrial and social conditions. But the directors of a railroad corporation may not do the like. They are not merely accountable to stockholders. They are accountable to the public first, and to their stockholders second. They have duties to the public to perform, and they must perform them."

These basic fundamentals still prevail and the rights of the public are still paramount. The railroad still has the public duty to furnish transportation which cannot be avoided by becoming involved in labor difficulties.

In the present case we have the additional element that the District Court found that the railroad by following an obstinate, unreasonable and provocative policy in its labor relations disabled itself from being able to comply with its legal duty to furnish rail transportation. Consequently, this is a different case than one where the employer has been guiltless of any wrongdoing, and the rights of the public to transportation are not open to question.

II.

A Court of Equity Has Inherent Power to Take Such Steps as Are Necessary to Make Its Decrees Effective and Consequently Upon Issuing a Mandatory Injunction Against the Railroad It Had the Power to Restrain Everyone From Interfering With the Operation of Its Decree.

The Circuit Court of Appeals directed the District Court by mandatory injunction to order the railroad to provide rail service. It also directed the District Court to enter an injunction restraining interference with the railroad in its carrying out of the injunctive order.

In entering the injunction against interference it was endeavoring to preserve the dignity of its own decrees.

Courts have inherent power to protect themselves and their decrees, and to make them effective.

In Root v. Woolworth, 150 U. S. 404, the following is stated at page 412:

> "Where the Court possesses jurisdiction to make a decree, it possesses the power to enforce its execution."

Had the operation of the railroad been entrusted to a receiver as an officer of the Court, it would be unquestioned that the Court had the power to enjoin any interference with the receiver in his operation. In the present case, the Court ordered operation not by a receiver but by the management itself. To make its order effective and carry out its execution it had inherent power to enjoin interference with its operation.

Respectfully submitted,

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